EXHIBIT CA

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

In Re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456
THIS DOCUMENT RELATES TO: United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Dey, Inc., et al., Civil Action No. 05-11084-PBS, and United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Boehringer Ingelheim Corp., et al., Civil Action No. 07-10248-PBS	Master File No. 01-CV-12257-PBS; Hon. Patti B. Saris

VIDEOTAPED DEPOSITION OF

THE RHODE ISLAND DEPARTMENT OF HUMAN SERVICES

by JOHN YOUNG

Providence, Rhode Island

Wednesday, December 3, 2008

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order to be eligible for the federally negotiated rebate arrangement, needed to offer open formularies and as such were then able to claim a rebate based on the units of each drug they had purchased; and that the states -- each state formed its own retail pricing formula that was called out in their State Plan.
Q. Have you ever heard the term Estimated Acquisition Cost?
A. I have.
Q. If you look to the third paragraph -- excuse me, under the fourth full paragraph under background there, the first sentence says, "Specifically the regulations state that EAC means the state Medicaid agencies, quote, best estimate of what price providers generally are paying for a drug." Is that your understanding of what the EAC means?
A. Yes.
Q. If you turn to the page at the upper right-hand side it will say 10.193. Do you see that there?

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A. I do.
Q. Let me ask, have you heard of the Office of Inspector General before?
A. I have.
Q. Are these among the reports that you said were a regular practice of yours to review in receiving from --
A. Yes.
Q. -- the federal agencies that oversaw Medicaid?
A. Yes.
Q. On that page that I just drew your attention to, 10.193, it says, "Within the pharmaceutical industry, AWP means nondiscounted list price. Pharmacies purchase drugs at prices that are discounted significantly below AWP or list price."
Do you have any understanding as to whether Rhode Island Medicaid program abandoned AWP reimbursement because it had notice that AWP was not the price that pharmacies were paying for drugs?

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A. I was not part of that decision. I know only that they did replace AWP as their basis with Wholesale Acquisition Cost.
Q. If you scroll down to the fifth paragraph, the last sentence in the fifth paragraph on that same page says, "Recounts that for the purchases that the OIG audited, 99.6 percent, were made at prices averaging from about 16 percent below AWP. These drug purchases ranged from as little as .23 percent below AWP to as much as 42 percent below AWP."
With your years of experience in Rhode Island Medicaid, if you had received this OIG report, would you have been comfortable continuing to reimburse pharmacies at a nondiscounted AWP ingredient cost rate?
MS. SMITH: Objection.
THE WITNESS: In principle, if I were to look at this report, I would be very concerned about the consistency of claims adjudication and perhaps only secondarily using AWP as a price basis.

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BY MS. RANKIN:
Q. Would you consider this OIG report or OIG reports in general to be reliable sources of information?
MS. SMITH: Objection.
THE WITNESS: OIG reports were not necessarily sources of information but analysis.
BY MS. RANKIN:
Q. Would you consider them to be a reliable source of analysis?
A. Within the confines of their inquiry, yes.
Q. So if this OIG report is noting that drug purchases for pharmacies tend to be as much as 42 percent below AWP, would you be inclined to approve a reimbursement rate for Medicaid at straight AWP instead of a discount from AWP?
A. Based only on what I am looking at, the answer would be no.
Q. Is it your understanding that AWP means a nondiscounted list price?
A. In general, yes.

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Q. Is it also your understanding that pharmacies purchase drugs at prices that are discounted significantly below AWP?
A. I understand that that possibility exists, which is the reason for the usual and customary provision.
Q. Have you ever understood AWP to be the same thing as the actual acquisition cost for -- a pharmacy makes to purchase a drug?
A. No.
Q. Is it your understanding that anyone at Rhode Island Medicaid has understood AWP to be the same thing as actual acquisition costs to pharmacies?
MS. BAUM: Objection.
MS. SMITH: Objection.
THE WITNESS: Not that I know.
BY MS. RANKIN:
Q. Have you ever heard AWP referred to as "ain't what's paid"?
A. I don't think so.
Q. Does this observation in the OIG 1984

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report that pharmacies were not paying AWP surprised you?
A. No.
Q. Why not?
A. I think that there is a difference between the contractual relationship between a pharmacy and either a wholesaler, a distributor or a manufacturer, and the price agreement that operates for a payer.
Q. So with respect to AWP, is it your understanding that there could be one price -- strike that. Can you explain, can you read back his answer and then maybe you can we'll all listen together. If you read back his answer.
(Answer was read by the reporter.)
BY MS. RANKIN:
Q. Can you explain that a little more? What do you mean by contractual agreement?
A. A dispensing pharmacy may have a purchase arrangement with any of the entities I described that provides them with volume discounts, with promotional considerations, with

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trade accommodations, with payment privileges that don't necessarily translate to a payer's environment where we are trying to adjudicate an individual claim for a specific prescription made on a date certain.
Q. Okay. So the instances you described, the discounts you just described, it sounds like you're saying that those discounts, you would not expect those discounts to be reflected in the AWP?
A. The list price would not reflect that level of detail, and obviously that differs from provider to provider and from time to time.
Q. When you say list price, are you referring to the list prices that are published in the pricing compendia?
A. I am.
Q. AWP and WAC?
A. Yes.
Q. So it is your understanding that the AWP and the WAC that are reported in the pricing compendia do not reflect necessarily the same

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contract prices that are actually at issue in any particular transaction?
A. I'm sorry, which transaction are you asking about?
Q. You gave the example that there are contractual arrangements between a pharmacy and a wholesaler or manufacturer, correct?
A. Yes.
Q. And I understood you to say that there may be certain prices and discounts in that contractual arrangement that are not reflected in the prices that are reported to the third-party compendia; is that correct?
A. That's correct.
Q. You gave a few examples of the types of discounts that you believe were not reported in AWP or WAC. I believe you said volume discounts?
A. Yes.
Q. Have you ever heard of a prompt pay discount?
A. Yes.
Q. What do you understand a prompt pay

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AVERAGE WHOLESALE PRICE LITIGATION	Civil Action:
	01-CV-12257-PBS
THIS DOCUMENT RELATES TO U.S.	Judge Patti B. Saris
Ex rel. Ven-A-Care of the Florida	Magistrate Judge
Keys, No. 06-CV-11337-PBS	Marianne B. Blower

/

The Videotaped Deposition of SANDRA KRAMER,

Taken at 2860 Eyde Parkway,

East Lansing, Michigan,

Commencing at 9:08 a.m.,

Tuesday, March 25, 2008,

Before Cynthia A. Chyla, CSR 0092.

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A. As far as --
MR. HENDERSON: Objection.
A. I don't remember there being an official definition of AWP.
BY MR. GABEL:
Q. Would the glossary of terms in the Pharmacy Manual reflect the official definition of AWP by Michigan Medicaid?
A. When?
Q. For this page that we're looking at here.
A. For the time period that's listed?
Q. Yes.
A. That's what's in their manual.
Q. And that would be consistent with Michigan Medicaid's definition of AWP; right?
A. I was no longer at Michigan Medicaid at that time, so it would be their policy and their interpretation of how that was applied.
Q. Is the interpretation that's listed here in the Pharmacy Manual inconsistent with the way you understand -- understood AWP to be defined when you worked at Michigan Medicaid?

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MR. HENDERSON: Objection.
A. There is more to it. I guess I need further questions and clarification there. Because the definition that's here is just limited to First DataBank, and I worked at Medicaid a long period of time.
BY MR. GABEL:
Q. Okay. Did you understand that AWP referred to prices published in pricing compendia?
A. Yes.
Q. Okay. And those pricing --
A. And --
Q. I'm sorry.
A. I'm sorry. And also was in compendia and by manufacturers.
Q. By manufacturers. What do you mean by that?
A. They would also send their pricing to the State of Michigan.
Q. Manufacturers would send AWPs to the State of Michigan?
A. Yes.
Q. Did Abbott ever send AWPs to the State of

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Michigan?
A. I don't specifically remember getting Abbott AWPs.
Q. Which manufacturers would send their AWP to Michigan?
A. There were numerous. I do not recall which manufacturers sent them to me.
Q. And were they required to send you their AWPs?
A. No, they were not.
Q. Do you know why they would send AWPs to you?
A. They wanted to -- us to update our pricing modules.
Q. Did you request the AWPs from them?
A. No, I did not.
Q. But to your knowledge, you don't recall Abbott specifically sending any AWPs to you?
A. I don't specifically recall them. It would not surprise me that they did.
Q. Do you have any documentation showing Abbott sending AWPs to you?
A. I do not personally have that.

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Q. Do you have any documentation showing any manufacturer sending their AWPs to you?
A. Yes.
Q. Do you know if those have been produced in response to Abbott's subpoena?
A. I believe they were.
Q. Okay. So, the sources that you would have for AWP when you worked at Michigan Medicaid would be both the prices published in compendia and what specific manufacturers would represent to you the AWPs were?
A. Yes.
Q. Do you know where the manufacturers who were sending their AWP -- the AWP prices to you obtained the AWPs?
A. No.
Q. Do you know if those AWPs were taken from the compendia and then sent to you by the manufacturers?
MR. HENDERSON: Objection.
A. No. It appeared that sometimes those publications were prior to the updating of the

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The Videotaped Deposition of SANDRA KRAMER,

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A. At the time that this was written who was he?
Q. Yes.
A. I'm uncertain. He probably was a bureau director at the time.
Q. Was he --
A. Management to me.
Q. So someone you reported to?
A. Probably not directly.
Q. But he was higher on the Michigan Medicaid hierarchy?
A. Yes.
Q. And in your memos to Mr. Smith or others higher on the Michigan Medicaid hierarchy, did you attempt to be as accurate as possible?
A. I would try to.
Q. You see the subject of this is elimination of actual acquisition costs reimbursement.
Do you see that?
A. Yes.
Q. What does that refer to?
A. I think it would refer to switching the

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reimbursement technique from AAC to EAC.
Q. And that switch was actually made in 1995; right?
A. Yes.
Q. So this is approximately three years before the switch was made?
A. Yes.
Q. Do you know why this was being discussed in 1992?
A. It explains here that the pharmacy association's newsletter published that there was going to be a change from AAC reimbursement for Michigan Medicaid.
Q. And it's dated -- it actually states that Mr. Smith agreed to move way from actual acquisition costs; is that right?
A. Yeah.
Q. Did you have a discussion with him regarding whether he did, in fact, agree to move away from AAC?
A. I don't recall.
Q. Did you ever have any discussions with Mr. Smith about moving away from AAC to EAC?

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A. Yes.
Q. Okay. How many -- how many times did you have discussions with him about that topic?
A. I don't know how many times.
Q. Do you recall ever discussing with him what AWPs were meant to represent?
A. Not really. Not -- no.
Q. You state, and I'd like to focus here on the second paragraph, the last sentence of that paragraph, it states: "If such a proposal were adopted, there could be tremendous cost implications for the program."
What did you mean by that?
A. I meant that AWP minus 10 percent is -- would not have been what we were paying under AAC reimbursement.
Q. So fair to say that you thought there would have to be a steeper discount off of AWP if you were going to approximate AAC?
A. Yes.
Q. And when you say tremendous cost implications, what did you mean by that phrase?
MR. HENDERSON: Objection.

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A. I guess I was trying to get his attention.
BY MR. GABEL:
Q. Did you get his attention?
A. I don't remember him responding.
Q. Okay. The next paragraph you say: "As an example, I have attached the direct (or acquisition cost) and AWP for several new products from a major generic company. The price differentials are enormous with AWP ranging from 13 percent to 500 percent above acquisition cost!!!"
With the three exclamations, were you also trying to get his attention?
MR. HENDERSON: Objection.
A. I think it speaks for itself.
BY MR. GABEL:
Q. Okay. Fair enough.
You state: "The price differentials are enormous --" well, actually, strike that.
It's fair to say that as early as 1992 you realized that in some instances AWPs were upwards of 500 percent above acquisition costs?
A. For the generic.

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Q. For the generic specifically?
A. That's what I'm referring to here.
Q. Okay. And this is what you were conveying to Mr. Smith in 1992?
A. Right. In looking at this documentation when I pulled it together here, too, I noted that the attachment just refers to the differential between AWP and -- or the spread I guess is the term we're using, direct price, and direct price is not necessarily what the pharmacist would have been paying.
Q. Did you understand that the pharmacist could be paying even less than direct price?
A. At the time it may not have been my understanding, but looking back at this documentation, the direct price I know was not necessarily what the pharmacist was paying.
Q. They could have been paying lower than direct price?
A. Yes.
Q. Okay. And let's look at this document that you attach.
Well, first, let me make sure. Is

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this the document that you attached to the memo to Mr. Smith?
A. I'm thinking it is. I'm uncertain --
Q. They were produced to us back to back, so that's why I was putting them together.
A. Right. I notice a lot of my documents got shuffled.
Q. Okay.
A. So ....
Q. Do you have any reason to believe that this is not the document that you would have been forwarding along to him?
A. I think it is. It's date stamped the 13th and this was written November 30th.
Q. Okay. Thanks.
And you said it's date stamped November 13th. That's 1992; right?
A. Correct.
Q. Okay. And this is from Geneva Pharmaceuticals?
A. Yes.
Q. And did this come directly to you, or did

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you receive this from some other source?
A. I don't recall exactly. I assume if it was in my possession, it came directly to me.
Q. Directly to you from Geneva?
A. Yeah. Dear sir or Madam.
Q. Okay. Did you ever have any discussions with Mr. Ron Hartmann, the author of this?
A. I believe I have.
Q. Okay. Did you discuss in particular how AWP compared to acquisition costs?
A. No.
Q. What were your discussions with Mr. Hartmann about?
A. I don't recall exactly what form, but I believe he attended meetings, public meetings that were held by the MSA.
Q. And you see in this letter from Mr. Hartmann, it lists AWP in one column and direct prices in another column. And, in fact, there -- there are spreads between those two prices; correct? And in one instances -- in one instance you note that the spread is approximately 500 percent; right?

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A. (Nods head.)
Q. Is that referring to the last drug on this list?
A. I would have to do the math again.
Q. But overall, you see there --
A. It seems to be the biggest spread.
Q. Okay. Now, in your experience as a policy analyst for Michigan Medicaid, would you, when looking at spreads, be more concerned about the percentage differential or the dollar differential? For instance, there's a 500 percent spread on that final drug, but it's less than a $20 spread when it's expressed in dollars.
For the top drug, we see that there's about $100 spread. Would you be more concerned about the dollar issue or the percentage issue?
MR. HENDERSON: Objection to the form.
A. I would be concerned about the percentage.
BY MR. GABEL:
Q. Percentage. Okay.
Although even with a lower

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UNITED STATES DISTRICT COURT

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In re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	
United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., Civil Action No. 06-11337-PBS; and United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., v. Dey, Inc., et al., Civil Action No. 05-11084-PBS; and United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., v. Boehringer Ingelheim Corp., et al., Civil Action No. 07-10248-PBS	MDL No. 1456 Civil Action No. 01-12257-PBS Honorable Patti B. Saris

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OIG's 1984 report that discussed the acquisition cost of pharmacies in Arkansas. Do you recall that?
A. I recall looking at a lot of documents yesterday. I can't say that I specifically remember that particular one, but I know we looked at a lot of documents referring to acquisition costs yesterday.
Q. Well, just so that you don't have to take my word for it, let's pull that out so you can see what I'm referring to. This was -- I believe was Roxane Exhibit 9. Is that the number you have?
A. Yes.
Q. Right. And we examined Roxane Exhibit 9 yesterday --
A. Okay. We did.
Q. -- which was the report that talked about the acquisition costs of pharmacies in Arkansas, among other states, do you recall that?
A. I do.
Q. And we looked at the various ranges of

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acquisition costs for pharmacies in Arkansas on Page 9.
A. Uh-huh. Correct.
Q. So now back to Roxane Exhibit 19. This letter in March of 1988, the -- HCFA's regional office states that the average difference between AWP and what pharmacists generally paid in Arkansas and Texas was 12.53 percent below AWP. Do you agree that this document reflects that?
A. Generally, it was 12.53, not on all drugs. I will agree that the document says that.
Q. And, in fact, that the document says that the survey performed by Dallas regional office excluded antibiotic drugs, generic drugs and drugs that were purchased directly from the manufacturer?
A. So this would be strictly for brand name drugs. This would not include any generics.
Q. And based on what we've seen, you would expect that the discounts available for pharmacies, when purchasing generic drugs, are

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typically greater than the discounts when purchasing branded drug?
MS. OBEREMBT: Objection.
A. I can only make that assumption based on the survey findings. The survey findings generally show that -- and I'd have to look at the survey again, that the variance on brand is not as great on the variance on generics. I mean, that's common knowledge. I'd guess you'd say.
MR. REALE: Let me mark the next one.
A. A common assumption. Excuse me. Let me rephrase that.
[Marked Exhibit Roxane 020]
Q. (By Mr. Reale) Roxane Exhibit 20 has just been passed out. This is Bates Page HHC011-2260 to 2268. And this is a letter from the Arkansas Department of Human Services, and it appears to be dated June 22nd, 1988, and it's from Kenny Whitlock, Director at DHS, to Don Hearn at HCFA in the regional office at Dallas, Texas. This was another document, Ms. Bridges,

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that was produced to us by the Federal Government in this lawsuit. And if you look at the first paragraph of this letter, it's a response from Arkansas to concerns raised by HCFA. Do you agree with that?
A. It's a clarification or a modification, according to this.
Q. And it has been your experience, hasn't it, that when Arkansas has submitted Plan Amendments to CMS, from time to time they may ask for additional information from the State, either to support certain aspects of the Plan Amendment or for other aspects.
A. For a State Plan Amendment, they can request additional information. Is this in reference to a State Plan Amendment? I don't know the -- I mean, I don't know if this is in reference to a State Plan Amendment. Let me rephrase that.
Q. Now, if you would turn to the second page of the cover letter, or excuse me, of the letter. And at the top, there's something that

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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THIS DOCUMENT RELATES TO: U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al. Case No. 06-CV-11337-PBS	) Judge Patti B. Saris)) Magistrate Judge) Marianne B. Bowler))

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WEDNESDAY, MARCH 19, 2008

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VIDEOTAPED DEPOSITION OF

JAMES KEVIN GOROSPE

Reported By: JOANIE MURAKAMI, CSR No. 5199
Registered Merit Reporter
Certified Realtime Reporter

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issues; is that fair?
A. That's fair.
Q. Did you -- so I take it you recall reading this report when you took your first position in DHS?
A. That's correct.
Q. And this report, it's titled Report by the Auditor General of California. How Medi-Cal and Other Healthcare Providers Manage Their Pharmaceutical Expenditures, and it's dated August 1991 in the lower right-hand corner of the first page.
A. Uh-huh.
Q. This document, obviously, if you read it at DHS, it was sent to DHS at some point, correct?
A. That is correct.
Q. And if you go to the last two pages of the document, 71223 and 24, there's a letter from a woman named Molly Joel Coye, who's the director of DHS, to a gentleman named Kurt R. Sjoberg, S-J-O-B-E-R-G, dated August 22, 1991.

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Do you see that letter?
A. Yes.
Q. And reading this letter, Ms. Coye indicates that secretary Gould asked her to respond to the August 1991 draft report that appears earlier in the exhibit, correct?
A. That is correct.
Q. Okay. If you could look at page seven for me. It's Bate Stamped 71171. There's a section there called Utilization and Price Controls.
A. I see it.
Q. And that paragraph, it refers to two United States Senate reports.
Do you see that? One is titled Skyrocketing Prescription Drug Prices: Turning a Bad Deal into a Fair Deal dated January of '90, and then about halfway down the paragraph, it refers to an August 1989 report, which we've already looked at today, titled Prescription Drug Prices: Are We Getting Our Money's Worth.
Do you see that?

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A. Yes, I do.
Q. In reference to the first report, the January 1990 report, the California Auditor General is noting that the United States Senate report in January of 1990 concluded that federal and state governments pay higher prescription drug prices through their Medicaid programs than any other major purchasers of prescription drugs, correct?
A. That's the statement made.
Q. And then in reference to the August 1989 report, which we've already looked at today, the California Auditor General, again, is noting, in 1991, that the earlier Senate report -- let me start over.
This document refers to the August 1989 report from the US Senate which reported that organizations, such as the Department of Veterans Affairs, hospitals and HMOs, are negotiating prices directly with manufacturers at discounts of 41 to 99 percent off the published average wholesale price, correct?

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A. That's what it says, yes.
Q. So DHS knew, no later than August of 1991, that certain pharmaceutical purchasers received discounts of up to -- from anywhere from 41 to 99 percent off of the published AWP, correct?
MR. PAUL: Objection. Form. No foundation to DHS.
MR. GOBENA: Same objection.
THE WITNESS: I would assume anybody that read the report would have read this passage.
BY MR. COLE:
Q. Anyone who would have read the report would have learned this information at that time, correct?
A. That is correct.
Q. And is it your understanding, based on your experience at Medi-Cal, that if a draft report by the Auditor General was sent to a particular department, such as DHS, that people in DHS would read it and learn the information

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)
_____)
THIS DOCUMENT RELATES TO) MDL No. 1456
State of California, ex rel.) Civil Action:
Ven-A-Care v. Abbott) 01-12258-PBS
Laboratories, Inc., et al.)

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VOL. II

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MONDAY, SEPTEMBER 22, 2008

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VIDEOTAPED DEPOSITION OF

J. KEVIN GOROSPE, Pharm.D.

--oOo--

Reported By: CAROL NYGARD DROBNY, CSR No. 4018
Registered Merit Reporter

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A. Yes.
Q. Second to the last paragraph on that page the first sentence reads "It is clear and well documented that pharmacy reimbursement methodologies that rely on AWP and a low dispensing fee overpay pharmacies for drug ingredient costs and underpay them for the cost of dispensing the drug."
Did I read that correctly?
A. Yes.
Q. Is that consistent with your understanding of pharmacy reimbursement methodology that rely on AWP?
A. Yes.
Q. And how long have you had that understanding?
A. Again, as I previously stated, the late nineties.
Q. If you turn to page 2, you'll see that under the heading "Drug Ingredient Costs" the first paragraph goes through some of the findings of the Myers and Stauffer study that we talked about

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earlier; correct?
A. Yes.
Q. And in the last sentence it reads "It's clear from the information that the Department's current rate of AWP minus 10 percent does not accurately reflect the drug acquisition costs in the marketplace;" correct?
A. Yes.
Q. Do you agree with that statement or is that consistent with your understanding at the time?
A. Yes.
Q. The rate referenced there, AWP minus 10 percent, was adopted after the study was performed; correct?
A. I don't recall.
Q. The rate of AWP minus 10 percent was -- didn't become effective until after the Myers and Stauffer study was released; correct?
A. That's correct.
Q. I take it you don't recall whether the specific legislation or budget proposal that

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implemented minus 10 percent occurred before or after June of 2002?
A. That is correct.
Q. You would agree with me, though, that the rate study was referenced in the state's attempts to -- in the state's communications with CMS to seek approval of the AWP minus 10 percent?
A. Yes.
Q. The last paragraph on that page --
Scratch that.
The second to the last -- the second to last paragraph in the page, last sentence, states "Therefore, the Department proposed using a single and differentiated rate equal to AWP minus 20 percent."
Do you understand that to mean that the -- that they were not proposing to reimburse generics differently?
A. That is correct.
Q. And then the first sentence of the following paragraph states "A rate of AWP minus 20 percent is still significantly higher than the

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pharmacy acquisition cost of generic drugs."
Did I read that correctly?
A. Yes.
Q. Is that consistent with your understanding at the time?
A. Yes.
Q. Did you have that understanding also going back to the late nineties, that AWP minus 20 percent is significantly higher than pharmacy acquisition costs for generic drugs?
A. Yes.
Q. Last sentence of that paragraph or that page, I guess, going over to the next page, "The reimbursement of generic drugs will still be significantly above pharmacy's acquisition costs."
And then it goes on.
Did I read that correctly?
A. Yes.
Q. Do you understand that to --
Withdrawn.
So was it your understanding to the extent you recall this proposal that the

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reimbursement rate of AWP minus 20 percent was made knowing that reimbursement on that basis would be significantly higher than acquisition costs for generic drugs?
A. Yes.
Q. And then the -- further down on that page there's a paragraph with the heading "Impact on Access" that refers to stakeholder meetings.
Do you recall having stakeholder meetings prior to this legislative proposal?
A. Not that I can recall.
Q. Do you recall during any discussions for changing the reimbursement rate having meetings with stakeholders?
A. Not that I -- not that I can recall.
Q. Do you have an understandingas to what the document -- is referring to when it refers to a "stakeholder"?
A. Yes.
Q. Would that be a reference to providers of medical -- Medi-Cal?
A. Yes, amongst others.

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Q. And others might be beneficiaries, other organizations that have some interest in the -- in the Medi-Cal program?
A. That's correct.
Q. Would you agree that this paragraph reflects consideration on the part of --
Or is it your understanding of this paragraph that Medi-Cal was considering whether the proposed change would affect beneficiaries' access to care?
A. Yes.
Q. And do you recall in 2004 when rate changes were discussed considering access to care as a -- a policy matter?
A. Yes.
MR. BENNETT: I think we need to break for a tape. So --
MR. PAUL: Okay. Just to restate my concern earlier with regard to this, I think I stated on the record but I'm not sure I mentioned that we were talking about Exhibit 52, although I'm sure it's fairly obvious from the transcript, but I

Page 597

want to make sure that that objection's on the record and while we would prevail on whatever motion was required to retract this, I would ask that all the testimony that was given in connection with it be redacted, but, obviously, we'll take that up later.
VIDEOGRAPHER: This is the end of tape two, volume two, of the deposition of Kevin Gorospe.
We are off the record at 2:21 p.m.
(Thereupon a recess was taken at 2:21 p.m. and the deposition resumed at 2:31 p.m.)
VIDEOGRAPHER: This is the beginning of tape three, volume two, of the deposition of Kevin Gorospe.
We are back on the record at 2:31 p.m.
MR. BENNETT: I'd like to mark this Exhibit 53, I think we're on.
(Exhibit Gorospe 053 was marked for Identification.)
BY MR. BENNETT:

Page 598

Q. Exhibit 53 has labeled CAAG/DHS 0084626 and 627.
Dr. Gorospe, do you recognize this document?
A. Yes.
Q. Can you describe it for us?
A. It appears to be a description of Medi-Cal pharmacy reimbursement related to a reimbursement proposal and various data related to acquisition cost of drugs relevant to AWP, also describes briefly points about the -- study of Medi-Cal pharmacy reimbursement.
Q. Did you draft this document?
A. Not that I can recall, no.
Q. Do you recall receiving a copy of the document?
A. Yes.
Q. Do you know who would have drafted it, if not yourself?
A. Somebody within the Pharmacy Section.
Q. And the Pharmacy Section, as you've described with the previous document, encompasses

EXHIBIT CE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

----------X

IN RE: PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456

----------) Civil Action

THIS DOCUMENT RELATES TO:) No. 01-12257-PBS

United States of America, ex. rel.) Hon. Patti Saris

Ven-a-Care of the Florida Keys,) Magistrate Judge

Inc., v. Abbott Laboratories, Inc.,)

Civil Action No. 06-11337-PBS; and)

United States of America, ex. rel.) VIDEOTAPED

Ven-a-Care of the Florida Keys,) DEPOSITION OF

Inc., v. Dey, Inc., et. al., Civil) THE ILLINOIS

Action No. 05-11084-PBS; and United) DEPARTMENT OF

States of America, ex. rel.) HEALTHCARE AND

Ven-a-Care of the Florida Keys,) FAMILY SERVICES

Inc., v. Boehringer Ingleheim) by JAMES PARKER

Corp. et. al., Civil Action)

No. 07-10248-PBS.) NOVEMBER 18, 2008

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Page 182

Q. And the reason that this budget initiative was proposed was because AWP had become virtually meaningless as a real number, particularly for multi source drugs, correct?
A. That is correct.
Q. And it states, "The AWP is set by each drug manufacturer and reported to the various drug information services, but in actuality it is no longer used by wholesalers selling to pharmacies," correct?
A. That is what it says.
Q. And it states that, "Factors such as volume discounts and rebates by wholesalers or manufacturers are examples of changes that have made AWP meaningless," correct?
A. Correct.
Q. And, in 1996, IDPA used AWP as part of its reimbursement methodology, correct?
A. That's correct.
Q. And it continues to use AWP today?
A. That is correct.
Q. And in 1996 through December of 2000,

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it didn't use Wholesale Acquisition Cost-plus method, correct?
A. That is correct.
Q. Now, if Illinois Medicaid understood that AWP had become virtually meaningless as a real number, particularly for multi source drugs, why did it continue to use that benchmark as part of its payment methodology?
A. Because there was no viable alternative. So the best approach to Estimated Acquisition Cost was to continue to try to figure out the best discount off of AWP to estimate acquisition cost.
Q. But they understood it was virtually meaningless in so doing?
MS. OBEREMBT: Objection.
MR. LIBMAN: Objection. Objection to form.
BY MR. REALE:
Q. That AWP was virtually meaningless?
A. Well, I --
MS. OBEREMBT: Same objection.

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THE WITNESS: Some people may have had that opinion. It depends on what they meant by "virtually meaningless." We certainly knew it did not mean what the common understanding of the words would mean.
BY MR. REALE:
Q. Well, it -- a document from the Director of the IDPA dated September 10th, 1994 refers to AWP as being meaningless, particularly so for multi source drugs, correct?
A. That is correct.
Q. And at one time, Illinois Medicaid used Actual Acquisition Cost to reimburse pharmacies, correct?
A. That is correct.
Q. And there's nothing stopping Illinois from continuing to use actual acquisition cost to reimburse pharmacies today?
MR. LIBMAN: Objection to form.
THE REPORTER: You know what, I lost your question. I'm so sorry. "There's nothing stopping Illinois from using the actual..."

Page 185

MR. REALE: Acquisition cost to reimburse pharmacies today.
THE WITNESS: There's nothing that legally prohibits us from doing that.
BY MR. REALE:
Q. And they did at one time?
A. And we did at one time.
Q. Did you talk to Mr. Hazelwood about Roxane Illinois Exhibit 5 and in particular the proposal in September of 1994?
A. Not about this document, no.
(Exhibit Roxane IL 006 was marked for ID)
BY MR. REALE:
Q. Mr. Parker, you've just been handed another exhibit which we've marked as Roxane Illinois Exhibit 6, Bates No. AWP-IL-16734 to 16755. The title of this document is "Budget/System Impact Fiscal Year 1995." Do you recognize this type of document?
MR. LIBMAN: Take your time to review it if you need to, Mr. Parker.

EXHIBIT CF

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,

Plaintiffs,

v.

Abbott Laboratories; [redacted] et al.,

Defendants.

FILED UNDER SEAL

Case No. 95-1354-Civ-Marcus

MEMORANDUM IN SUPPORT OF THE UNITED STATES' EX PARTE MOTION FOR AN EXTENSION OF TIME

This is an action under the qui tam provisions of the False Claims Act ("FCA") which permit a private party (called a "relator") to bring suit to recover damages allegedly suffered by the United States due to fraud. See 31 U.S.C. § 3730(b). Under the FCA, the action remains under seal for 60 days during which the United States may elect to intervene and assume primary responsibility for prosecuting the case. The 60-day period may, however, be extended upon application of the Government for good cause shown. This memorandum and accompanying declaration demonstrate why good cause exists in this case to extend the period by 90 days so that the Government may complete its investigation and make an informed decision whether to intervene.

The relator concurs with the United States that a 90 day extension is appropriate under the circumstances.

8/18/95

FACTS

The relator, Ven-A-Care of the Florida Keys, filed this action under seal on June 23, 1995. The Attorney General was served with the Complaint and a written disclosure of material evidence on June 26, 1995. Thus, the sixty-day period for the government to make a decision whether to intervene began to run on that day.

The complaint alleges that defendants, various major manufacturers of home infusion pharmaceuticals published inflated wholesale prices of their respective pharmaceuticals, knowing that Medicare and Medicaid reimbursed providers based on these published wholesale prices.

Before the United States can decide whether to intervene it must, at a minimum, investigate the allegations and assess their legal and factual merit.

LEGAL AUTHORITY

The qui tam provisions of the False Claims Act in pertinent part provide that:

> (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.
>
> (3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2).

31 U.S.C. §§ 3730(b)(2) and (3) (emphasis added).

Congress recognized that the Government would frequently require additional time in which to make an informed decision on whether to assume control over the action, as required under the Act. S. Rep. No. 99-345, 99th Cong., 2d Sess. 25, reprinted in 1986 U.S. Code Cong. & Ad. News 5266, 5290.

As set forth above and in the attached Declaration of Sara Strauss, the Government would like to keep the investigation under seal until it has the investigative resources to analyze the necessary documentation and conduct the necessary interviews. Both relator and the Government agree, therefore, that more time is needed in order for the Government to make an adequately informed decision as to whether to intervene.

The United States has also moved this Court for an order keeping the complaint and material evidence under seal during the requested extension. The sound policy reasons for keeping qui tam complaints under seal while the Government pursues its requisite investigation are also found in the legislative history:

> Keeping the qui tam complaint under seal for the initial 60-day time period is intended to allow the Government an adequate opportunity to fully evaluate the private enforcement suit and determine both if that suit involves matters the Government is already investigating and whether it is in the Government's interest to intervene and take over the civil action. . . .

* * *

> . . . The initial 60-day sealing of the allegations has the same effect as if the qui tam relator had brought his information to the Government and notified the Government of his intent to sue. The Government would need an opportunity to study and evaluate the information in either situation. . .

Id. at 5289. The same reasoning supports the continuing need to keep the complaint in this action under seal pending the Government's completion of the additional investigation and analysis necessary in this complex case.

CONCLUSION

For all of the above reasons, the United States respectfully requests that its motion for a ninety (90) day extension of time, to and including November 26, 1995, during which the complaint and other documents filed in this matter remain under seal, and during which the United States may

evaluate its decision whether to intervene in the action, be granted.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

KENDALL COFFEY
United States Attorney
Southern District of Florida

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EXHIBIT CG

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,	
Plaintiffs,	FILED UNDER SEAL Case No.95-1354-Civ-Marcus
v.	
Abbott Laboratories; [redacted] et al.,	
Defendants.	

UNITED STATES OF AMERICA'S MOTION FOR EXTENSION OF SEAL ON QUI TAM COMPLAINT AND RELATED FILINGS AND FOR EXTENSION OF THE GOVERNMENT'S EVALUATORY PERIOD

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this motion for an extension of time of 120 days up to and including March 26, 1996, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action

11/27/95

and during which the Complaint and all other related filings shall remain under seal.

The seal on this matter is due to expire November 27, 1995. Although the government has begun investigating the allegations of Medicare fraud made by the relator, the investigation will not be complete by the November 27, 1995 deadline. The claims stated by the Relators are extensive, include 10 named defendants, six other anticipated defendants, and alleged damages of over $2 billion. Since a complete investigation is needed in order for the government to make an informed decision whether to intervene and take over this action pursuant to 31 U.S.C. § 3730(b)(4), the United States has made this motion, ex parte and under seal, for the Court to extend both the evaluatory period and the time during which the Complaint and all other related filings remain under seal for an additional 120 days. The relator has no objection to this request.

The Court is respectfully referred to the Declaration of Assistant United States Attorney Mark A. Lavine, and the Proposed order filed herewith.[1]

---

[1] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

KENDALL COFFEY
UNITED STATES ATTORNEY

By: _____

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CERTIFICATE OF SERVICE

IT IS HEREBY certified that a true and correct copy of the foregoing was mailed this 27th day of November, 1995 to:

Atlee Wampler
James Breen
Wampler, Buchanan and Breen
777 Brickell Ave.
Miami, FL 33131

ASSISTANT UNITED STATES ATTORNEY

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,	
	FILED UNDER SEAL[1]
Plaintiffs,	
	C.A. No. 1354-Civ-Marcus
v.	
Abbott Laboratories; [redacted] et al.,	
Defendants.	

DECLARATION OF MARK A. LAVINE

I, Mark A. Lavine, do state and declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Southern District of Florida. I have been assigned responsibility for handling the above-captioned matter together with Sara Strauss, a trial attorney in the Commercial Litigation Branch of the United States Department of Justice, Civil Division, Washington, D.C.

2. This is a qui tam action against the above-named defendants, initiated by the relator Ven-a-Care of the Florida Keys ("Relator"), pursuant to the False Claims Act, as amended,

[1] A copy of the United States' Ex Parte Motion For An Extension Of Time as well as the proposed order have been served on relator's counsel. This pleading has been filed in camera because it contains confidential information concerning the United States' investigatory process. Therefore, a copy of this pleading has not been served on relator's counsel.

31 U.S.C. § 3730. The complaint in this action was received by the United States Attorney General on June 26, 1995.

3. Atlee Wampler III, counsel for the relator, has authorized me to represent that the relator has no objection to this proposed extension.

4. The False Claims Act, 31 U.S.C. § 3730(b)(2), requires the Government to elect whether to intervene in the qui tam action within sixty days of its receipt of the Complaint and the qui tam plaintiff's material evidence in support of the Complaint. The Government has sought and been granted one extension of this seal period which expires on November 26, 1995. The government, however, is not yet prepared to make an informed decision and thus requests an additional 120 days.

5. Analysis by the United States of the relator's allegations requires independent investigation of the factual basis for the allegations. These allegations are being investigated by the Office of Inspector General of the Department of Health and Human Services ("IG").

6. As specified in my last declaration, the relator has named multiple defendants and effectively made hundreds of allegations. Because of the multiple number of defendants, including ten of the largest pharmaceutical companies in the world (plus six more which the Relators intend to add to the suit), the number of allegedly inflated pharmaceutical drugs that are the subject of the qui tam action, and alleged damages of $2 billion, the government will need substantial time and

resources to properly investigate this matter. During the ninety day extension period the assigned attorneys have contacted numerous officials at the Health Care Financing Association ("HCFA") and met with those individuals responsible for establishing reimbursement policies for pharmaceuticals to discuss the merits of the allegations. In addition, we have been working with the IG to craft an appropriate subpoena to issue to the named defendants and several other entities involved in the distribution of injectable drugs. I anticipate that the government will issue these subpoenas within the next three weeks. After the subpoenas are issued, the defendants will require a period of time to comply with the requests, and the government will need time to review the documentation before it can make an educated intervention decision. We hope to have completed these tasks within the next 120 days.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 27th day of November, 1995,

MARK A. LAVINE

EXHIBIT CH

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,	C.A. No. 95-1354-Civ-Marcus
	FILED UNDER SEAL
Plaintiffs,	
v.	
Abbott Laboratories; [redacted], et al.,	**UNITED STATES OF AMERICA'S MOTION FOR EXTENSION OF SEAL ON QUI TAM COMPLAINT AND RELATED FILINGS AND FOR EXTENSION OF THE GOVERNMENT'S EVALUATORY PERIOD AND MEMORANDUM OF LAW**
Defendants.	

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this motion for an extension of time of 120 days up to and including July 24, 1996, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action

5/10/96

and during which the Complaint and all other related filings shall remain under seal.

The seal on this matter is due to expire March 26, 1996. Although the government has begun investigating the allegations of Medicare fraud made by the relator, the investigation will not be complete by the March 26, 1996 deadline. The claims stated by the Relators are extensive, include 10 named defendants, six other anticipated defendants, and alleged damages of over $2 billion. Since a complete investigation is needed in order for the government to make an informed decision whether to intervene and take over this action pursuant to 31 U.S.C. § 3730(b)(4), the United States has made this motion, ex parte and under seal, for the Court to extend both the evaluatory period and the time during which the Complaint and all other related filings remain under seal for an additional 120 days. The relator has no objection to this request.

The Court is respectfully referred to the Declaration of Assistant United States Attorney Mark A. Lavine, and the Proposed order filed herewith.[1]

---

[1] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

KENDALL COFFEY
UNITED STATES ATTORNEY

By: _____

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CERTIFICATE OF SERVICE

IT IS HEREBY certified that a true and correct copy of the foregoing was mailed this 22d day of March, 1996 to:

Atlee Wampler
James Breen
Wampler, Buchanan and Breen
777 Brickell Ave.
Miami, FL 33131

ASSISTANT UNITED STATES ATTORNEY

EXHIBIT CI

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,	Case No. 95-1354-Civ-Marcus
	FILED UNDER SEAL
Plaintiffs,	
v.	
Abbott Laboratories; [redacted] et al.,	**UNITED STATES OF AMERICA'S MOTION FOR EXTENSION OF SEAL ON QUI TAM COMPLAINT AND RELATED FILINGS AND FOR EXTENSION OF THE GOVERNMENT'S EVALUATORY PERIOD AND MEMORANDUM OF LAW AND REQUEST FOR STATUS CONFERENCE**
Defendants.	

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this motion for an extension of time of 120 days up to and including November 21, 1996, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action

7/24/96

and during which the Complaint and all other related filings shall remain under seal.

The seal on this matter is due to expire July 24, 1996. Although the government has been actively investigating the allegations of Medicare fraud made by the relator, the investigation will not be complete by the July 24, 1996 deadline. The claims stated by the Relator are extensive, include 10 named defendants, six other anticipated defendants, and alleged damages of over $2 billion. Since a complete investigation is needed in order for the government to make an informed decision whether to intervene and take over this action pursuant to 31 U.S.C. § 3730(b)(4), the United States has made this motion, ex parte and under seal, for the Court to extend both the evaluatory period and the time during which the Complaint and all other related filings remain under seal for an additional 120 days.

The Relator desires to appear before the Court at a status conference at the Court's earliest convenience regarding the extension of the seal, and subject to the status conference with the Court has no objection to the extension.

The Court is respectfully referred to the Declaration of Assistant United States Attorney Mark A. Lavine, and the Proposed order filed herewith.[1]

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

KENDALL COFFEY
UNITED STATES ATTORNEY

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[1] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

CERTIFICATE OF SERVICE

IS HEREBY certified that a true and correct copy of the
egoing was mailed this 24th day of July, 1996 to:

lee Wampler, III
mes J. Breen
mpler, Buchanan and Breen
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iami, FL 33131

Mark A Jarvie
ASSISTANT UNITED STATES ATTORNEY

EXHIBIT CJ

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,	Case No. 95-1354-Civ-Marcus
	FILED UNDER SEAL
Plaintiffs,	
v.	
Abbott Laboratories; [redacted], et al.,	**UNITED STATES OF AMERICA'S MOTION FOR EXTENSION OF SEAL ON QUI TAM COMPLAINT AND RELATED FILINGS AND FOR EXTENSION OF THE GOVERNMENT'S EVALUATORY PERIOD THROUGH MARCH 21, 1997 AND MEMORANDUM OF LAW**
Defendants.	

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this motion for an extension of time of 120 days up to and including March 21, 1997, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action

11/21/96

and during which the Complaint and all other related filings shall remain under seal.

The seal on this matter is due to expire November 21, 1996. Although the government has been actively investigating the allegations of Medicare fraud made by the relator, the investigation will not be complete by the November 21, 1996 deadline. The claims stated by the Relator are extensive, include 10 named defendants, six other anticipated defendants, and alleged damages of over $2 billion. Since a complete investigation is needed in order for the government to make an informed decision whether to intervene and take over this action pursuant to 31 U.S.C. § 3730(b)(4), the United States has made this motion, ex parte and under seal, for the Court to extend both the evaluatory period and the time during which the Complaint and all other related filings remain under seal for an additional 120 days.

The Relator has no objection to the requested relief.

The Court is respectfully referred to the Declaration of Assistant United States Attorney Mark A. Lavine and the proposed order filed herewith.[1]

---

[1] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

Respectfully submitted,

FRANK W. HUNGER
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CERTIFICATE OF SERVICE

IT IS HEREBY certified that a true and correct copy of the foregoing was mailed this 21st day of November, 1996 to:

Atlee Wampler, III
James J. Breen
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777 Brickell Ave.
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ASSISTANT UNITED STATES ATTORNEY

EXHIBIT CK

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,	Case No. 95-1354-Civ-Marcus
	FILED UNDER SEAL
Plaintiffs,	
v.	
Abbott Laboratories; [redacted] et al.,	**UNITED STATES'S MOTION FOR EXTENSION OF SEAL ON QUI TAM COMPLAINT THROUGH MAY 21, 1997 AND FOR PARTIAL LIFTING OF THE SEAL AND MEMORANDUM OF LAW**
Defendants.	

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this motion for an extension of time of 60 days up to and including May 21, 1997, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action, during which the Complaint and all other related filings shall remain

3/24/97

under seal, and for a partial lifting of the seal in order to disclose these proceedings to the Defendants.

The Plaintiff in this action has now filed an Amended Complaint. The Amended Complaint is 105 pages in length, has dropped five of the originally named defendants, has added five new defendants, and has substantially expanded the allegations upon which the case is based.

The Court previously extended the seal in this matter through March 21, 1996 based upon the government's need for additional time to investigate this complicated and difficult case. The filing of the amended complaint which adds several new defendants, thereby triggering a new 60-day evaluatory period for the government, has compelled the United States to make this motion, ex parte and under seal, for the Court to extend both the evaluatory period and the time during which the Complaint and all other related filings remain under seal for an additional 60 days. As this process draws to a close, leave is also sought to discuss the allegations with the defendants, to identify the Relator to the Defendants and/or to provide a copy of the Complaint or Amended Complaint to the Defendants.

The Relator has no objection to the requested relief.

The Court is respectfully referred to the Declaration of Assistant United States Attorney Mark A. Lavine and the proposed order filed herewith.[1]

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

WILLIAM A. KEEFER
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[1] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

EXHIBIT CL

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,

Plaintiffs,

v.

Abbott Laboratories; [redacted], et al.,

Defendants.

Case No. 95-1354-Civ-Marcus

FILED UNDER SEAL

UNITED STATES' UNOPPOSED MOTION FOR EXTENSION OF SEAL ON QUI TAM COMPLAINT THROUGH JANUARY 15, 1998 AND FOR PARTIAL LIFTING OF THE SEAL AND MEMORANDUM OF LAW

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this motion for an extension of time of 90 days up to and including January 15, 1998, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action, during which the Complaint and all other related filings shall remain under seal, and for a partial lifting of the seal in order to disclose these proceedings to the additional Defendants named in the Second Amended Complaint.

Since the Court's previous Order granting an extension of the seal, the United States has been diligently investigating the allegations set forth in the relator's Second Amended

10/17/97

Complaint, filed in August 1997. During this period, the Office of Inspector General of the Department of Health and Human Services [redacted] the government has begun to make its initial contacts with counsel for each of the defendants. Each defendant has indicated that, although they will be able to commence production on or before the October 31 return date, an extension of time to complete the production of documents will be necessary. The government expects to begin receiving responsive documents beginning on the subpoena return date and continuing throughout the remainder of the period covered by the requested extension. The documents sought by the government [redacted] are critical to the government's assessment of whether to intervene in this qui tam matter. The partial lifting of the seal with respect to the additional Defendants named in the Second Amended Complaint is consistent with the Court's previous Order which partially lifted the seal with respect to the first sixteen Defendants named by relator in its earlier pleading.

The Relator has no objection to the requested relief.[1]

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[1] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

THOMAS E. SCOTT
UNITED STATES ATTORNEY

By: _____
MARK A. LAVINE
Assistant U.S. Attorney
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Miami, FL 33132
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MICHAEL F. HERTZ
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REED STEPHENS
Civil Division
Commercial Litigation Branch
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044
(202) 307-0404

CERTIFICATE OF SERVICE

IT IS HEREBY certified that a true and correct copy of the foregoing was mailed this 17th day of October, 1997 to:

Atlee Wampler, III
James J. Breen
Wampler, Buchanan and Breen
777 Brickell Ave.
Miami, FL 33131

ASSISTANT UNITED STATES ATTORNEY

ext5.mot October 17, 1997

EXHIBIT CM

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,	)	NIGHT BOX FILED JAN 0 5 1998 CARLOS JUENKE CLERK, USDC / SDFL / MIA
	) Case No. 95-1354-Civ-Kehoe	
	) FILED UNDER SEAL	
Plaintiffs,	)	
v.	) UNITED STATES' UNOPPOSED APPLICATION FOR EXTENSION OF SEAL ON QUI TAM COMPLAINT	
Abbott Laboratories; [redacted], et al.,	)	
Defendants.	)	

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this application for an extension of time of 90 days up to and including April 15, 1998, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action, during which the Complaint and all other related filings shall remain under seal.

Since the Court's previous Order granting an extension of the seal, the United States has been diligently investigating the allegations set forth in the relator's Second Amended Complaint, filed in August 1997. During this period, the Office of Inspector General of the Department of Health and Human Services [redacted]

stated that it did not object to a further extension of the time to intervene but did not commit to a specific number of days for the extension. After discussions with relator's counsel, however, relator has agreed to the ninety day extension requested in the instant motion.[2]

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

THOMAS E. SCOTT
UNITED STATES ATTORNEY

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[2] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

CERTIFICATE OF SERVICE

IT IS HEREBY certified that a true and correct copy of the foregoing was mailed this 15th day of January, 1998 to:

Atlee Wampler, III
James J. Breen
Wampler, Buchanan and Breen
777 Brickell Ave.
Miami, FL 33131

ASSISTANT UNITED STATES ATTORNEY

January 15, 1998

EXHIBIT CN

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc., Plaintiffs, v. Abbott Laboratories; [redacted] et al., Defendants.	Case No. 95-1354-Civ-Kehoe

UNITED STATES' UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO ELECT WHETHER TO INTERVENE IN QUI TAM ACTION AND MEMORANDUM OF LAW

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this application for an extension of time of one hundred fifty (150) days up to and including April 23, 1999, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action, during which the Complaint and all other related filings shall remain under seal.[1]

[1] *The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Application for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.*

11/17/98

Since counsel for the United States appeared before the Court in March 1998, the United States has been diligently investigating the allegations set forth in the relator's Second Amended Complaint, filed in August 1997. Twenty-four defendants and two other subpoenaed non-parties have continued to provide documents over the course of the past several months. Counsel for the United States has pressed defendants to state that all responsive documents have been produced yet defendants continue to produce additional documents. The United States has also incurred considerable expense creating an electronic database for storage and review of the thousands of documents.

As set forth in the Declaration of T. Reed Stephens ("Stephens Declaration") accompanying the instant application, the United States has pursued a non-stop agenda of meetings and telephone conferences with numerous parties in an effort to meet the November 23rd intervention deadline. The meetings with the defendants and the state Medicaid entities described herein were authorized by the orders partially lifting the seal on the *qui tam* complaint. Nine face-to-face meetings lasting hours in duration each have been conducted with defense counsel. Many other meetings in at least five states have taken place among counsel for the United States and the representatives of the 47 state Medicaid Fraud Control Units actively participating in the assessment of this qui tam matter. See Stephens Declaration and Declaration of Carolyn McElroy, Director Maryland Medicaid Fraud Control Unit, accompanying the instant Application for Extension of Time.

Despite this activity, plaintiff's counsel has been able to meet, to date, with counsel for only ten of the 24 defendants. The first sixty days of the requested extension will permit counsel for the United States to have initial substantive meetings with the remaining 14 defendants and

continue to meet with counsel for the first ten. The final 90 days of the requested extension will be devoted to completing any settlement negotiations. Thus far, plaintiff is engaged in earnest settlement talks with one of the defendants.

Counsel for the United States has kept the relator's representatives actively involved in the investigation so there would be no question from relator's perspective as to whether the United States has been "dragging its feet" over these past months. Relator agrees that the five month extension will allow the United States and the State representatives to complete its investigation.

In addition to the reasons set forth in the Stephens Declaration, additional good cause exists for the five month extension. As set forth in the accompanying Declaration of David Honig, Assistant Attorney General for the State of Florida ("The Honig Declaration"), the State of Florida has been [redacted]

CONCLUSION

For the foregoing reasons and those set forth in the accompanying declarations, plaintiff

respectfully requests that the Court grant the instant request for a five month (150) extension of time in which to elect to intervene — during which this qui tam matter will remain under seal.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

THOMAS E. SCOTT
UNITED STATES ATTORNEY

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November 17, 1998

CERTIFICATE OF SERVICE

IT IS HEREBY certified that a true and correct copy of the foregoing Motion for Extension of Time (without the attached declarations) was mailed this 17th day of November, 1998 to:

Atlee Wampler, III
James J. Breen
Wampler, Buchanan and Breen
777 Brickell Ave.
Miami, FL 33131

ASSISTANT UNITED STATES ATTORNEY

EXHIBIT CO

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc., Plaintiffs, v. Abbott Laboratories; [redacted] et al., Defendants.	Case No. 95-1354-Civ-Gold

UNITED STATES' UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO ELECT WHETHER TO INTERVENE IN QUI TAM ACTION

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this application for an extension of time of one hundred twenty (120) days up to and including August 26, 1999, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action, during which the Complaint and all other related filings shall remain under seal.[1]

[1] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

Since the previous extension of the seal, the United States has been diligently investigating the allegations set forth in the relator's Second Amended Complaint. Twenty-four defendants and two other subpoenaed non-parties have continued to provide documents over the course of the past several months. Counsel for the United States has pressed defendants to state that all responsive documents have been produced yet defendants continue to produce additional documents. The United States has also incurred considerable expense creating an electronic database for storage and review of the thousands of documents.

As set forth in the Declaration of T. Reed Stephens ("Stephens Declaration") accompanying the instant motion, the United States has pursued a non-stop agenda of meetings, witness interviews, and telephone conferences with numerous parties in an effort to meet the April 23rd intervention deadline. The meetings with the defendants and the affected state Medicaid entities described herein were authorized by the Orders partially lifting the seal on the qui tam complaint. Seven more face-to-face meetings lasting hours in duration each have been conducted with defense counsel. Many other meetings and witness interviews in at least four states have taken place among counsel for the United States and the representatives of the 47 state Medicaid Fraud Control Units actively participating in the assessment of this qui tam matter. See Stephens Declaration, Accompanying the Instant Motion for Extension of Time.

Despite this activity, plaintiff's counsel has been able to meet, to date, with counsel for only eleven of the 24 defendants. The first 60 days of the requested extension will permit counsel for the United States to (1) continue its witness interviews, (2) continue its current settlement negotiations with defendants, (3) pursue additional efforts to mitigate the damages allegedly

CERTIFICATE OF SERVICE

IT IS HEREBY certified that a true and correct copy of the foregoing Motion for Extension of Time was mailed this 23 day of April, 1999 to:

Atlee Wampler, III
James J. Breen
Wampler, Buchanan and Breen
777 Brickell Ave.
Miami, FL 33131

ASSISTANT UNITED STATES ATTORNEY

April 23, 1999

EXHIBIT CP

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED BY _____ D.C.
TAKE

99 AUG 26 PM 3:29

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

CASE NO. 95-1354-CIV-GOLD

UNITED STATES OF AMERICA, ex rel. Ven-A-Care of the Florida Keys, Inc.,

Plaintiffs,

v.

Abbott Laboratories; [redacted], et al.,

Defendants.

UNITED STATES' UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO ELECT WHETHER TO INTERVENE IN QUI TAM ACTION

The United States, pursuant to 31 U.S.C. § 3730(b)(3), presents to this Court, ex parte and under seal, this application for an extension of time of ninety (90) days up to and including November 24, 1999, in which to notify the Court of its decision whether to intervene in the above-captioned False Claims Act qui tam action, during which the Complaint and all other related filings shall remain under seal.[1]

[1] The Legal Authority supporting the proposed extension is set forth in the Government's Memorandum accompanying its First Motion for an Extension of Time. Rather than reiterating the same points, the Government respectfully refers the Court to this previously submitted memorandum.

Since the previous extension of the seal, the United States has continued to diligently investigate the allegations set forth in the relator's Second Amended Complaint and aggressively pursue settlement discussions with a large number of the twenty-four defendants. At this point, the United States has reached a tentative settlement with one defendant (subject to approval by appropriate government officials), is in advanced settlement negotiations with three other defendants and is engaging in serious settlement discussions with an additional four defendants. In addition, a potential resolution of the relator's case against two other defendants is also at hand. Discussions have also been initiated with another nine defendants. In sum, the government is well advanced in its attempts to resolve the qui tam allegations against 10 of the defendants and has made progress in this regard as to an additional 9 defendants. And, the government intends to initiate discussions with the final five defendants within the next 30 days.

The United States submits that the pre-litigation settlement of the allegations of the complaint against as many defendants as possible is especially desirable in a case of this magnitude and complexity. The additional extension of time, at a minimum, should allow the more advanced negotiations to come to fruition and allow the other negotiations to advance to a point where a appraisal can be made as to whether a settlement is likely. At that point, it is hoped that a decision on intervention can be made with the expectation that actual litigation will be necessary with respect to only a small minority of the 24 defendants.

As set forth in the Declaration of Mark A. Lavine ("Lavine Declaration") accompanying the instant motion, the United States has continued its non-stop agenda of meetings, witness interviews, and telephone conferences with numerous parties in an effort to meet the August 26th intervention deadline. The meetings with the defendants and the affected state Medicaid entities

described herein were authorized by the Orders partially lifting the seal on the qui tam complaint. Seven more face-to-face meetings lasting hours in duration each have been conducted with defense counsel. Many other meetings and witness interviews have taken place among counsel for the United States and the representatives of the 47 state Medicaid Fraud Control Units actively participating in the assessment of this qui tam matter. See Lavine Declaration, ¶¶5, 6, and 7.

As a result of this activity, plaintiff's counsel has been able to meet or commence discussions , to date, with counsel for 19 of the 24 defendants. The requested extension will permit counsel for the United States to (1) continue its witness interviews, (2) continue its current settlement negotiations with defendants, (3) pursue additional efforts to mitigate the damages allegedly suffered by the Medicare and Medicaid programs, (4) have initial substantive meetings with the remaining 5 defendants, and (5) push for additional compliance with the agency subpoenas served on the defendants. The United States intends to place particular emphasis on completing any settlement negotiations that may result in a narrowing of the participants in this extensive qui tam matter.

Counsel for the United States has kept the relator's representatives actively involved in the investigation so there would be no question from relator's perspective as to whether the United States has been moving expeditiously over these past months. Relator agrees that a ninety (90) day extension will allow the United States and the State representatives to complete this investigation.[2]

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[2] As set forth in the United States' previous request for an extension, the State of Florida [redacted]

CONCLUSION

For the foregoing reasons and those set forth in the accompanying declaration, plaintiff respectfully requests that the Court grant the instant request for a ninety (90) day extension of time in which to elect to intervene — during which this qui tam matter will remain under seal.

Respectfully submitted,

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August 26, 1999

[redacted]